

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

WAYNE COUNTY ASSOCIATIONS FOR
THE RETARDED, d/b/a SERVICES TO
ENHANCE POTENTIAL¹

Employer

and

CASE 7-RC-21804

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW), AFL-CIO

Petitioner

and

MICHIGAN AFSCME, COUNCIL 25
AND ITS AFFILIATED LOCAL 1640,
AFL-CIO, CLC

Intervenor

APPEARANCES:

William L. Hooth, Attorney, of Troy, Michigan, for the Employer.

William J. Karges, Attorney, of Southfield, Michigan, for the Petitioner.

Eric I. Frankie, and Bruce A. Miller, Attorneys, of Detroit, Michigan, for the Intervenor.

DECISION AND ORDER

¹ The name of the Employer appears as amended at the hearing.

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organizations involved claim to represent certain employees of the Employer.
4. No question concerning commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of about 12 full-time and regular part-time employees in the classifications of case manager/employment training specialists (case manager/ETS), employment training specialists, and transition and assistive technical coordinators, all of whom the Petitioner asserts are professional employees. The Employer and Intervenor contend that the petition is barred by the voluntary recognition of the Intervenor for the petitioned-for classifications as an accretion to the existing bargaining unit. Both the Employer and Intervenor maintain that the petitioned-for employees are not professional employees.

The Employer is engaged in providing vocational training, support services, and community employment services to developmentally disabled adults in Wayne County. Recipients of the Employer's services can receive training and employment opportunities within the Employer's facility workshops or by placement in community employment. The Employer operates six facilities; the Dearborn facility at 2941 S. Guley Road; the Detroit facility at 4700 Beaufait; the Downriver facility at 4210 13th Street in Wyandotte; the Eastern facility at 17910

² All parties filed briefs, which were carefully considered.

Van Dyke in Detroit; the Northwest facility at 32229 Schoolcraft Road in Livonia; and the Western Wayne facility at 35000 Van Born Road in Wayne. Each facility houses a workshop. The central administration is located at 32233 Schoolcraft Road in Livonia. The Employer's organization is headed by Executive Director Seymour Simons who reports to the board of directors. Reporting to Simons are Assistant Executive Director/Clinical Director Erica Ellis, who also serves as the facility case management director, Assistant Director for Administration Avery Krieger, and four facility or regional facility directors.³

The Intervenor represents a wall-to-wall unit of approximately 120 of the Employer's employees, except for the petitioned-for classifications which have been historically excluded from the unit. The most recent collective bargaining agreement, effective from September 16, 1996 until September 30, 1999 and extended on a day-to-day basis pending contract negotiations, included the following job classifications: assistant production manager/workshop supervisor, bus driver, case coordinator, case manager, contract procurement agent, evaluator, food service director, food service manager, food service supervisor, instructor, intake coordinator, maintenance worker I and II, receptionist/typist, speech pathologist, trainer – maintenance, truck driver, unit secretary, supervisor/job coach, supervisor/workshop, supervisor/worksite, and supervisor/relief.

There are 11 case managers assigned throughout the Employer's 6 facilities, who report to 4 case management or regional case management supervisors, who in turn report to the facility case management director.⁴ The case managers provide case management services to recipients who are receiving services, including training and workshop employment, at the Employer's facilities. Case managers complete an annual assessment of the needs of each recipient and an annual plan of service to meet those needs. They either provide the services themselves or coordinate with other service providers. The services provided are intended to assist the recipients to function independently and can include behavior management, preparation for employment in the community, transportation, and assistance paying bills. Case managers spend the majority of their time at the Employer's facilities. They are required to have a bachelors degree in social work or a related field, and either a certificate of registration as a social worker, or a license to practice professional counseling, including rehabilitation counseling, or a registered nurse license from the State of Michigan.

³ The parties stipulated, and I find, that Ellis and Krieger are supervisors within the meaning of the Act because they exercise independent judgment to assign and direct work of employees.

⁴ The parties stipulated, and I find, that the case management and regional case management supervisors are supervisors within the meaning of the Act because they exercise independent judgment to assign and direct work of employees.

The job classifications of case manager/ETS, employment training specialist, and transition and assistive technical coordinator⁵ fall within the placement department, which is located at the Dearborn facility. The case manager/ETSS and employment training specialists are assigned throughout the Employer's six facilities and are supervised by Placement Department Director Ronald Krezniak, whose office is at the Northwest facility.⁶ The placement department also includes job coaches, who are included in the bargaining unit if they are full-time employees, worksite supervisors, who are included in the bargaining unit, and worksite coordinators, who are unrepresented.⁷

There are currently five employment training specialists who receive referrals of recipients from case managers and from outside sources. These recipients are prepared to obtain community employment. The specialists engage in job development with the recipient which involves locating opportunities for community employment by advocating on behalf of recipients and the Employer with private employers. After placement of a recipient in community employment, the specialists identify and obtain funding for supportive services including job coaching, clothing, assistive technology, and transportation. The majority of the specialists' work time is spent outside the Employer's facilities. They complete daily service activity logs and meet with Krezniak bi-weekly to report on their activities. They also attend monthly placement department meetings and department development meetings held every other month. Training for the specialists consists of on-the-job training and an eight-day course at Michigan State University (case manager/ETSS attend a four-day course in the ETS aspect). Specialists are required to have a high school diploma or G.E.D. and some post-secondary education. However, there are two levels in the classification which allows the Employer to pay a higher salary to those individuals with bachelors degrees. The specialists retain responsibility for a recipient for 90 days after employment placement, after which the recipient is assigned to a case manager/ETS.

⁵ The individual filling the position of transition and assistive technical coordinator, Jean Miller (married name Genaw), resigned prior to the hearing and the position remained unoccupied at the time of the hearing. The Employer was unsure if the position would be filled because it is financed by a grant which will expire at the end of the Employer's fiscal year on September 30, 2000.

⁶ The parties stipulated, and I find, that Ronald Krezniak is a supervisor within the meaning of the Act because he exercises independent judgment to assign and direct work of employees.

⁷ No reason was provided as to the exclusion of the worksite coordinators and their supervisory status was not elucidated.

The case manager/ETS position essentially combines the responsibilities of the employment training specialist and the case manager, except that the case manager/ETS provides case management services to recipients in community employment to insure that they are functioning well on their jobs. They spend the majority of their work time outside the Employer's facilities meeting with recipients and their employers at their places of employment. There are eight individuals in the case manager/ETS classification. The requirements for the position are the same as those for the case manager, except that the case manager/ETS classification has a second level which allows the Employer to pay a higher salary to those individuals with masters degrees.

On January 20, 2000, the Employer's board of directors approved a strategic plan which set goals for the 2000-2004 period that incorporated the shifting emphasis of the State of Michigan, from which the Employer receives funding, to increase community employment placement. At the March 16, 2000 meeting of the board of directors, a reorganization plan was approved which was reflected in a new set of organization charts. The reorganization eliminated the positions of case manager/ETS and case manager and merged those two positions into a new position of supports coordinator. The use of the supports coordinator title reflects a change in terminology in the State of Michigan mental health code. The state defines supports coordination as a combination of community and facility case management services. However, the merger of the two existing classifications is not a state requirement. Pursuant to the reorganization, the supports coordinators will report to supports coordinator supervisors, who in turn will report to the facility directors. The Employer intends to have six supports coordinator supervisor positions, four of which will be filled by the current case management supervisors. The supports coordinators will be responsible for providing case management services for recipients both in the facilities and in community employment. The Employer was uncertain as to the number of supports coordinator positions. It is not clear whether all the employees in the case manager/ETS classification will become supports coordinators. As part of the reorganization, the employment training specialist position will be changed to employment specialist. The employment specialist classification will remain in the placement department and continue to report to Krezniak.

Within a couple of work days of the approval of the reorganization by the board of directors, the Employer contacted the president of Local 1640 and advised of the reorganization, the merger of the represented and unrepresented positions into the supports coordinator classification, and the newly created employment specialist position. The Employer expressed its belief that these classifications should be included in the bargaining unit and Local 1640 agreed and suggested that a meeting be arranged with a union staff representative to discuss issues of timing, salary differences, and seniority. Such a meeting was

held on April 18, 2000, but discussion was curtailed due to the filing of the petition in this case.

Within a week of the approval of the reorganization by the board of directors, the Employer began meeting with the employees to explain the reorganization. Copies of the draft organizational charts were distributed to the employees. The merger of the case manager and case manager/ETS positions into the new supports coordinator position was explained.

The Employer drafted job descriptions for the supports coordinator and employment specialist positions, both dated May 22, 2000. The supports coordinator description requires a bachelors degree in an unspecified field and the same licensing requirement as the existing case managers and case manager/ETSS for level I of the classification, but no license requirement for level II. The description also eliminates reference to supervision of job coaches, but refers to coordination of job coaching. The supports coordinator job description does not otherwise differ significantly from the current case manager/ETS job description.

The employment specialist job description requires a high school diploma or G.E.D. and one year of sales experience. The former employment training specialist job description required sales or other business related experience. The employment training description eliminates reference to supervision of job coaches and adds a numerical goal with respect to recipient placements, which incorporates the Employer's existing expectations. The new description reflects a greater emphasis on job development, but employment specialists will apparently continue providing support services for recipients during the first 90 days of employment.

Upon receipt of the petition in this case, the Employer put on hold its implementation of the reorganization and the new job descriptions. The Employer asserts that the reorganization would have been completed by the time of the hearing had the petition not been filed. One of the changes dictated by the reorganization occurred prior to the hearing, the relocation of the mobility staff, which previously reported to the executive director, to the placement department under Krezniak.

The petitioned-for classifications, as they currently exist, have been historically excluded from the Intervenor's bargaining unit. There has been no demonstration of majority status among the case manager/ETSS and employment training specialists by the Intervenor. Employees who have been historically excluded from a bargaining unit cannot be accreted to that unit. *United Parcel Service*, 303 NLRB 326 (1991). While the Board has found an accretion of historically excluded employees where the reason for the exclusion has ceased to

exist, *Southwestern Bell Telephone*, 254 NLRB 451 (1981), that is not the circumstance in this case.

The Employer was in the process of merging the classifications of case manager and case manager/ETS into a new classification of supports coordinator, thereby eliminating the petitioned-for classifications of case manager/ETS and employment training specialist, when the petition was filed. Where the future scope and/or composition of a unit is in substantial doubt due to an imminent and certain change, the Board will not direct an election. See *Hughes Aircraft Co.*, 308 NLRB 82 (1992); *Cooper International, Inc.*, 205 NLRB 1057 (1973); *Douglas Motors Corp.*, 128 NLRB 307 (1960). The Employer's board of directors approved a plan of reorganization, pursuant to its previously adopted strategic plan, which included the elimination of the case manager/ETS and employment training specialist classifications. Employees in the supports coordinator position will perform a combination of the duties of the two merged classifications, servicing recipients in the facility and in community employment. Supports coordinators will be supervised by supports coordinator supervisors who will in turn report to the facility managers. There will be no supports coordinators in the placement department. Upon approval of the reorganization plan by the board of directors, the Employer embarked on a series of steps to implement the changes. Employees meetings were held to explain the changes. The Intervenor was notified. New job classifications were drafted. If the petition had not been filed, the elimination of the case manager/ETS and employment training specialists positions, the implementation of the new supports coordinator and employment specialists positions would have occurred by the time of the hearing in this case. Under these circumstances, the changes were imminent and certain. I will not direct an election for job classifications that will cease to exist.

Although the Employer recognized the Intervenor as the representative of the newly created supports coordinator and employment specialist positions pursuant to the reorganization, the recognition is valid only if the employees are an accretion to the Intervenor's bargaining unit. *United Parcel Service*, supra. However, it is premature to determine whether either classification will be an accretion to the Intervenor's bargaining unit. The classifications have not yet been implemented and, in the interim, the case manager/ETSS and employment training specialists are continuing to operate as they always have within the placement department. A finding of accretion cannot rely on intended future changes and must be determined based on the facts as they exist at the time of the petition. See *Brooklyn Hospital Center*, 309 NLRB 1163, 1182 (1992); *Hudson Berling*, 203 NLRB 421, 422 (1973). In the representation case context, the Board looks to the actual, existing composition of units and to employees actually working in classifications to determine appropriate bargaining units and issues of accretion. *Coca-Cola Bottling Co.*, 310 NLRB 844 (1993); *TRT Telecommunications*

Corp., 230 NLRB 139 (1977). It would therefore be premature to determine at this time whether the created positions covered by the instant petition will be an accretion to the Intervenor's unit.⁸

Based on the foregoing determination, the status of the petitioned-for employees as professionals need not be decided.

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.⁹

Dated at Detroit, Michigan, this 28th day of July, 2000.

(Seal)

/s/William C. Schaub, Jr.
William C. Schaub, Jr., Regional Director
National Labor Relations Board
Region Seven
Patrick V. McNamara Federal Building
477 Michigan Avenue
Detroit, Michigan 48226-2569

347-8020-8000
385-7533-2020-4100
385-7533-4080

⁸ As previously noted, the position of transition and assistive technical coordinator remains vacant and it is uncertain whether the position will be filled in the future.

⁹ Under the provisions of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the **National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **August 11, 2000**.